

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

A.O. No. 385 of 2003

Date of decision: 25th February, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date 25.02.2006

Initials for Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 385 of 2003

1. Smt. Chanchal w/o late Amarnath
2. Master Harsh Naiyar S/o late Ram Gopal
adopted Son of Smt. Chanchal Mother and
natural guardian
Both Resident of Bharamal Ka Ghera,
Upper Road, Haridwar. ...Appellants

Versus

1. Sri Pradeep Kumar Sharma S/o Ram Kishan Sharma,
R/o Kirthal Police Station Ramala,
District Bagpat.
Presently R/o Village Vikas Sansthan,
Gurukul Kangari P.O. Gurukul Kangari,
District Haridwar.
2. Pramod Kumar S/o Randip Singh,
R/o Village and Post Amadalpur,
District Jamunapur.
Presently R/o J.P. Chauhan House No. D-8,
Ramnagar Colony, Near Railway Station,
Jwalapur, District Haridwar.
3. Sanjiv Naiyar S/o Amarnath,
R/o Amritsar Hotel Upper Road,
Haridwar.
4. The New India Insurance Company Ltd.
Haridwar, District Haridwar.
5. United India Insurance Company Ltd.
Yamuna Nagar, Hariyana,
Insurance Company of
Jeep HR 01 D 8799 ...Respondents

Mr. B.M. Pingal, Advocate for the appellants.

Mr. M.K. Goyal, Advocate for respondent No. 4.

JUDGMENT

**Coram: Hon. Rajeev Gupta, C.J.
Hon. P.C. Pant, J.**

RAJEEV GUPTA, C. J. (Oral)

Mr. B.M. Pingal, Advocate for the appellants.

None for respondents Nos. 1 to 3 and 5.

Mr. M.K. Goyal, Advocate for respondent No. 4 New India
Insurance Company Ltd.

They are heard.

This is claimants appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / Additional District Judge (Fourth Fast Track Court), Haridwar vide Award dated 28.08.2003 passed in Motor Accident Claim Petition No. 36 of 1998.

3. The appellants and one Neetu, widow of deceased Ram Gopal claimed compensation of Rs. 20,00,000/- for the death of Ram Gopal in the motor accident on 01.02.1998 when his motorcycle bearing registration No. UP10B 2595 was dashed by offending vehicle Mahindra Jeep bearing registration No. HR 1D 8799 resulting in multiple injuries to Ram Gopal, who succumbed to those injuries on his way to the Jolly Grant Hospital, Dehradun. The claimants further pleaded that deceased Ram Gopal was aged about 31 years and was earning Rs. 10,000/- per month from his own business.

4. The driver and owner of the offending vehicle Jeep contested the claim and pleaded that the deceased himself was responsible for the accident. The insurer of the Jeep disowned its liability to pay compensation to the claimants on the grounds that the motorcyclist himself was responsible for the accident and the driver of the Jeep was not holding a valid driving license.

5. The Tribunal, on the evidence led by the parties, held that Ram Gopal died on account of the injuries sustained by him in the accident; and that the accident occurred due to rash and negligent driving of the driver of the Jeep. As the Insurance Company could not establish its case, the Tribunal held the Insurance Company liable to pay compensation to the claimants. The Tribunal assessed the income of the deceased on the basis of the notional income at Rs. 15,000/- per annum and after deducting $\frac{1}{3}^{\text{rd}}$ of the said amount as his personal expenses, the claimants' dependency was assessed at Rs. 10,000/- per annum. By multiplying the annual dependency of Rs. 10,000/- with the multiplier of 15, the compensation was worked out at Rs. 1,50,000/-. A further sum of Rs. 2,000/- was awarded towards

funeral expenses. Thus, a total sum of Rs. 1,52,000/- was worked out as compensation. As first claimant Neetu, widow of deceased Ram Gopal had remarried during the pendency of the claim petition, the Tribunal awarded a sum of Rs. 32,000/- as compensation to claimant No. 2 Smt. Chanchal (mother of deceased Ram Gopal) and a sum of Rs. 70,000/- to claimant No. 3 Master Harsh Naiyar (minor adopted son of deceased Ram Gopal).

6. Mr. B.M. Pingal, learned counsel for the appellants vehemently argued that the Tribunal has erred in not accepting claimants' evidence about the income of the deceased; in setting apart Rs. 50,000/- out of the compensation of Rs. 1,52,000/- as share of claimant No. 1 Neetu (Widow of deceased Ram Gopal); and in not awarding the entire amount of compensation of Rs. 1,52,000/- to claimants Nos. 2 and 3.

7. As the evidence led by the claimants about the income of the deceased was too vague, no fault can be found with the approach of the Tribunal in discarding the same and in assessing the income of the deceased at Rs. 15,000/- per annum on the basis of the notional income prescribed in the Second Schedule to the Motor Vehicles Act. We do not find any infirmity in the deduction of $\frac{1}{3}^{\text{rd}}$ of the notional income as the personal expenses of the deceased, as the deceased, admittedly, was 31 years of age and must have been spending at least that much of amount on himself. The multiplier of 15 selected by the Tribunal also cannot be found fault with. Though Second Schedule to the Motor Vehicles Act prescribes multiplier of 17 for the age group of 30-35 years, but in view of the dictum of the Apex Court in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another** reported in (2003) 8 SCC 731, multiplier of 10 is appropriate in the case where the claimants are parents of the deceased. Though in the present case, claimants No. 3 Master Harsh Naiyar has been projected as adopted son of deceased Ram Gopal, but

basically, the main claimant was his mother claimant No. 2 Smt. Chanchal.

8. Thus, we do not find any scope for enhancement of compensation awarded by the Tribunal either on account of the income of the deceased or the claimants' dependency assessed by the Tribunal or the multiplier selected.

9. For the foregoing reasons, the appeal filed by the claimants under Section 173 of the Motor Vehicles Act fails and is, hereby, dismissed. No order as to costs.

(P.C. Pant, J.)
25.02.2006

(Rajeev Gupta, C.J.)
25.02.2006

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